

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL IZELL SEALS,

Plaintiff,

v.

RODNEY K. MITCHELL, et al.,

Defendants.

No. C 04-3764 SBA (PR)

**ORDER DENYING MOTION FOR  
LEAVE TO PROCEED *IN FORMA*  
PAUPERIS ON APPEAL, DENYING  
MOTION TO WAIVE FILING FEE  
AND TERMINATING ALL  
PENDING MOTIONS**

(Docket nos. 74, 80, 81)

Plaintiff Michael Izell Seals, a state prisoner and a frequent litigant in federal court, filed this pro se civil rights action under 42 U.S.C. § 1983 against Defendants employed by the Lake County District Attorney's Office, the Lake County Sheriff's Department and the Lake County Jail alleging violations of his constitutional rights.

On March 8, 2006, because Plaintiff had "on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury," the Court ordered him to show cause why this action should not be dismissed without prejudice to bringing in a paid complaint. 28 U.S.C. § 1915(g); see Andrews v. King, 398 F.3d 1113, 1120-21 (9th Cir. 2005). On April 10, 2006, Plaintiff paid the full filing fee.

Defendants Rynhart and Thomas filed a motion for summary judgment. Plaintiff opposed Defendants' motion and filed a cross-motion for summary judgment.

In an Order dated September 28, 2007, the Court granted Defendants' motion for summary judgment and denied Plaintiff's cross-motion for summary judgment.

On October 19, 2007, Plaintiff filed a Notice of Appeal and another document entitled "Motion for Summary Judgment, Declaration of Plaintiff, and Request for Release filed by Michael Izell Seals" (docket no. 74). Plaintiff has also filed a motion for leave to proceed in forma pauperis on appeal (docket no. 80) and a motion to waive the \$455.00 filing fee (docket no. 81).

1 Plaintiff's motion to proceed in forma pauperis on appeal (docket no. 80) and his motion to  
2 waive the \$455.00 filing fee (docket no. 81) are DENIED because Plaintiff was originally denied  
3 leave to proceed in forma pauperis in this action because he had many more than three cases  
4 previously dismissed as frivolous, malicious, or for failure to state a claim. See 28 U.S.C. § 1915(g).  
5 Plaintiff may seek leave to proceed in forma pauperis on appeal in the Ninth Circuit Court of  
6 Appeals. See Fed. R. App. P. 24(a).

7 Plaintiff's "Motion for Summary Judgment, Declaration of Plaintiff, and Request for Release  
8 filed by Michael Izell Seals" (docket no. 74) is DENIED as moot because summary judgment has  
9 already been granted to Defendants in this action.

10 The Clerk of the Court shall send a copy of this Order to the parties and to the Ninth Circuit.

11 This Order terminates all pending motions (docket nos. 74, 80, 81).

12 IT IS SO ORDERED.

13 DATED: 1/10/08

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SAUNDRA BROWN ARMSTRONG  
15 United States District Judge  
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1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE  
4 NORTHERN DISTRICT OF CALIFORNIA  
5

6  
7 SEALS,

Case Number: CV04-03764 SBA

8 Plaintiff,

**CERTIFICATE OF SERVICE**

9 v.

10 MITCHELL et al,

11 Defendant.  
12 \_\_\_\_\_/

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
14 Court, Northern District of California.

15 That on January 11, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
17 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
18 located in the Clerk's office.

19  
20 Michael Izell Seals V77488  
21 California State Prison - San Quentin  
22 San Quentin, CA 94974

23 Dated: January 11, 2008

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk